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## **Repression of Freedom of Expression in Poland**

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# Repression of Freedom of Expression in Poland: Renewing support for Wojciech Sadurski

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Gráinne de Búrca

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In pre-COVID19 times we drew attention ([here](#) and [here](#)) to the fact that our colleague, Professor Wojciech Sadurski, faces multiple civil and criminal cases in Poland resulting from his tweets which were critical of the ruling party. The cases were brought against him by the current government and its associates. In the first, PiS sued him for civil defamation based on a tweet of November 2018 in which he described PiS as an “organised criminal group”. A first hearing in that case took place on 27 November 2019 (see [here](#)). Sadurski was also sued by TVP, a TV-station fully controlled by PiS, both for civil and criminal defamation, following a tweet of January 2019 in which he described the TV-station as a “Goebbelsian media company”. That civil defamation case was scheduled for 28 January this year, but cancelled at the last minute (see [here](#)).

Unfortunately, COVID19 has evidently not changed the priorities of PiS and associates. The cases against Sadurski were recently rescheduled on short notice – another tactic of legal harassment – while the world is preoccupied with other matters. Hearings are now due to take place *in* (COVID19 induced) *absentia* on Monday 15 June (PiS v Sadurski) and 19 June 2020 (TVP v Sadurski – criminal defamation). The latter case was initially quashed on a procedural motion on 18 March 2020. But TVP appealed, showing the real priorities of PiS during the COVID19 pandemic, alleging serious legal errors by the judge of first instance. The court of appeal agreed with TVP and remanded the case for reexamination. TVP v Sadurski (civil defamation) has not yet been rescheduled.

Drawing attention to the same cases multiple times risks sounding like a broken record. Readers may well ask: but has anything changed? The answer is that infuriatingly little has changed. Indeed the correct framing should be: why *haven't* things changed? In its [Annual Work Programme 2020](#), enthusiastically titled “A Union That Strives for More”, the European Commission has announced, for this year alone, no less than three grand plans for a new European Democracy Action Plan, a revamped Annual Rule of Law Report and a New Strategy for the Implementation of the Charter of Fundamental Rights. But what is the point of yet another set of action plans and strategies, when the Commission, the European Parliament, Member states and national parliaments are not taking action on the basis of [existing possibilities and competences](#) right now, while freedom of expression is slowly suffocated as part of Poland's slide into authoritarianism? What is the point of EU and national politicians waxing lyrically about the importance of freedom of expression while refusing to speak out about flagrant abuses such as the cases against Sadurski?

The problem is also considerably broader than the cases against Sadurski. Search for 'freedom of expression' in the Court of Justice database and you will find [Case C-55/20](#). It is a request for a preliminary ruling, lodged at the end of January, by the Disciplinary Court of the Bar Association in Warsaw. It provides a sharp impression of the extent and the depth of the attempts to suppress freedom of expression in Poland today and the Polish government's determination to silence any sort of criticism by opponents.

The facts: R.G., a lawyer made public statements about the actions of the Public Prosecutor in 2016 "in which (s)he commented on the hypothetical possibility of his/her client, D.T., (then) President of the European Council [yes, Donald Tusk] being charged with a criminal offence". Incensed by this statement, given the [Polish government's bitter resentment of Donald Tusk](#), the National Prosecutor in July 2017 wrote to the Bar Association to request disciplinary proceedings be instituted against R.G. The Prosecutor complained that these statements "went beyond the limits of an advocate's freedom of expression, could be construed as unlawful threats, that is, as a criminal offence, and constituted disciplinary misconduct". The Bar Association's Disciplinary Spokesperson then investigated the case and has since attempted to dismiss it more than once for lack of any ground. But the Public Prosecutor and the Ministry of Justice have continued to appeal. The Bar Association's Disciplinary Court is now asking for guidance from Luxembourg as to whether this is a matter of EU law (insofar as the EU Services Directive also applies to the disciplinary liability of advocates), and as to how it should go about its work in a context in which the ultimate appeal instance (the Disciplinary Chamber of the Polish Supreme Court) is no longer impartial and independent in the light of criteria formulated by the European Court of Justice.

Clearly the sweeping strategy of PiS and associates to silence its critics through legal harassment and other tactics needs to be met with an equally if not more determined counterstrategy. That counterstrategy requires constant exposure of the party's legal and non-legal hounding of its critics, calling publicly on those with influence over PiS to use that influence to stop the harassment, and continuing to make noise until the assaults on freedom of expression cease.

If we sound like a broken record, it is because – despite numerous requests and attempts to draw their attention to this issue – national and European politicians have so far refused to act on their obligations and have failed to give any attention to these cases or to call on PiS to withdraw them. If the cases against Wojciech Sadurski continue, and if one of them ends up before the Court of Justice due to the unwillingness of leaders to act or intervene against the harassment, this would represent a real political failure. Europe needs intellectuals like Sadurski to speak out against what is happening to democracy and constitutionalism in his country, and courageous intellectuals like him deserve to be protected by the EU and by member state governments when they do so.

We renew our public support for Wojciech Sadurski and call on others to renew theirs. His words are his, but his freedom of expression is also ours. We stand [#WithWoj](#) and we ask you to do the same, either by signing below, or by showing you are [#WithWoj](#) on social media.

